

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

CASE NO. 05-3443-3P7

RAYMOND JAMES ZIMMER and
RHONDA LEE ZIMMER

Debtors.

VALERIE HALL MANUEL
Chapter 7 Trustee,

Plaintiff

Vs. ADV. NO. 05-130

RONALD S. WALKER and
LOUISE B. WALKER

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

This Case is before the Court upon the Chapter 7 Trustee's complaint seeking to avoid and recover a transfer pursuant to 11 U.S.C. § 548. After a trial held on November 1, 2005, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On April 6, 2005, Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code.
2. Defendants are the parents of Debtor, Rhonda Lee Zimmer.
3. On April 6, 1995, Defendants executed a vacant piece of land ("the Property") quitclaim deed in favor of the Debtors to a described as: 25 14 30 Irreg Parcel in SW ¼ W of lots 32 & 33 Country acres Ph I MB 42 Pg 111 Meas 1214.76 Ft. on N/L & Meas 377.57 Ft on W/L (D. Ex. 1).
4. The Property was transferred from the Defendants to the Debtors for no consideration. The transfer was made with the intent that the Debtors

would build a home upon the Property, which is located adjacent to Defendants' homestead.

5. In November of 1995, Debtors began to clear land on the Property in preparation for building a home.

6. In December of 1995, Debtors were notified by the St. Johns Water Management District that the Property was in a wetlands area and that any construction to be performed would require a permit. (D. Ex. 3). Due to the problems associated with the Property being located in a wetlands area as well as the costs associated with obtaining the necessary permits, Debtors discontinued any further efforts towards building a home on the property.

7. On January 22, 2004, Debtors executed and delivered to the Defendants a Quitclaim Deed to the Property. At the hearing, Defendant, Mr. Walker, testified that within a "week or two" of when he received the deed he personally delivered it to the courthouse located in Daytona Beach, Florida. However, the official date the deed was recorded by Volusia County is May 7, 2004. (D. Ex. 2).

8. Defendant, Mr. Walker, testified that he requested the property be transferred back to he and his wife due to the fact that he was planning on selling the Property and his adjacent homestead as one parcel of land. Debtors transferred the property back to the Defendants for no consideration and were insolvent on the date of the transfer, May 7, 2004.

9. Debtors never resided upon the property and at all times Defendants paid for the upkeep of the property, which included paying the property taxes.

11. Defendant, Mr. Walker testified that he had no knowledge of Debtors' financial troubles until after they had filed their petition in bankruptcy on April 6, 2005. Debtor, Mr. Zimmer, also testified that the Defendants had no knowledge that he and his wife were in financial trouble until after the filing of their petition.

12. A summary of Debtors' schedules shows that Debtors have \$81,498.21 in unsecured debt and only \$7,123.78 of personal property. (D. Ex. 1). Debtors' Schedule F lists the claim of Ford Motor Credit, in the amount of \$24,000, for an automobile turned in by the Debtors in May of 2004. (D. Ex. 1).

CONCLUSIONS OF LAW

The issue before the Court is whether the Chapter 7 Trustee is entitled to avoid the transfer of the Property that Debtors made to Defendants under 11 U.S.C. §548.

A. Bare Legal Title

Defendants assert that Debtors only possessed bare legal title to the Property and that they therefore did not have a sufficient interest in the Property for it to be subject to the provisions of 11 U.S.C. § 548. The Trustee disputes this assertion and argues that the Debtors maintained an interest in the Property sufficient to apply to 11 U.S.C. § 548.

In support of their position, Defendants argue that because Debtors (1) never paid anything for the Property, including its upkeep and property taxes, and (2) never lived on or benefited financially from the Property that they only held bare legal title.

Plaintiff argues that when the Defendants originally transferred the Property to the Debtors, the Debtors had an unrestricted right to transfer, sell or convey the Property for their own benefit. Further, Plaintiff asserts that there was no evidence presented to the Court that Defendants transferred the Property to Debtors with the intention of conveying to them only bare legal title.

“Where the Debtor holds bare legal title without any equitable interest, the estate acquires bare legal title without any equitable interest.” In re Halabi, 184 F. 3d 1335,1337 (11th Cir. 1999). Although Defendants cite to Halabi, the facts of that decision are not applicable to those of the instant case. In Halabi, the trustee was seeking to avoid the mortgagee’s assignment of a mortgage on real property. Id. The Eleventh Circuit held that recording an assignment of a mortgage was not a transfer of interest in any property belonging to the debtor’s estate. Id. at 1339.

“When a debtor holds only bare legal title, and not equitable title to property, only the legal title becomes part of the debtor’s bankruptcy estate.” In re Dwyer, 250 B.R. 472 (Bankr. D.R.I. 2000). In contrast to the instant case, the Chapter 7 Trustee in Dwyer conceded that the debtor only held bare legal title to the property at issue. Id. Thus, that issue was not presented to the court for its determination. The issue in Dwyer was whether the debtor’s bare legal title was enough to constitute an economic interest to the estate. Id. The court held that bare legal title

alone was not sufficient to create an interest in the estate. Id. Although, Defendants cite to Dwyer, in support of their argument, the Court cannot utilize the facts of the Dwyer case to support a finding that Debtors merely held bare legal title to the Property as the court made no factual determination as to that specific issue.

“A fraudulent transfer under § 548 of the Bankruptcy Code presupposes the existence of a transfer *of an interest of the debtor in property.*” In re Reynolds, 151 B.R. 974, 977 (Bankr. S.D. Fla. 1993). In Reynolds, the property at issue was purchased solely by the defendant’s son and his wife, however the defendants held legal title to it as the son could not qualify for financing without having the defendants cosign on the mortgage. Id. The court held that because the defendants held legal title to the property for the sole purpose of allowing their son to obtain financing that they could only be considered to have bare record title to the property. Id. In a case similar to Reynolds, the debtor took legal title to the property for the sole reason of enabling the defendant to obtain financing. In re Gillman, 120 B.R. 219, 220 (Bankr. M.D. Fla. 1990). Additionally, the parties in Gillman, had agreed that once the property was refinanced it would be conveyed back to the defendant. Id. Based upon the facts, the court in Gillman stated that it was satisfied that the debtor only held bare legal title to the property at issue. Id. at 220.

The instant case presents a completely different factual scenario then of that in Gillman and Reynolds, as financing is not an element of the present case. In the instant case, Defendants gave the Property to the Debtors with the intention that the Debtors would build their home upon it. Although it is very unfortunate that the Property was located upon wetlands and Debtors were subsequently unable to use the land, this fact does not diminish Debtors’ legal interest in the property. From the testimony presented at the hearing, it is clear to the Court that when the Defendants originally conveyed the property to the Debtors it was with the intention that it was to be the Debtors’ property, in fee simple, from the date the deed was recorded. Further, although the Court recognizes that the Defendants maintained all the upkeep on the property, including paying the property taxes, there was no evidence proffered that suggests they did so because of any legal obligation. Until the deed was recorded on May 7, 2004, in favor of the Defendants, Debtors maintained a fee simple interest in the property. Thus, based upon the facts of the instant case, the Court finds Debtors had a

sufficient interest in the property and that 11 U.S.C. § 548 is applicable.

B. 11 U.S.C. § 548(a)(1)(B)

11 U.S.C. § 548(a)(1)(B) states in pertinent part:

The trustee may avoid any transfer of the interest of the debtor in property... that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily-
(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

11 U.S.C. § 548(a)(1)(B).

Previously, this Court has found that the transfer of real property occurs on the date that the deed is recorded. *In re Shannis*, 229 B.R. 234 (Bankr. M.D. Fla. 1999), Fla. Stat. § 695.01. As the deed transferring the Property was recorded in the Volusia County public records on May 7, 2004, the Court finds that the transfer occurred within one year of the Debtors' petition in bankruptcy filed on April 6, 2005.

In order to prevail under 11 U.S.C. § 548(a)(1)(B) a Plaintiff must prove by a preponderance of the evidence that the transfer of the property was for less than a reasonably equivalent value and that the debtors were insolvent at the time of the transfer. At the hearing, Defendant, Mr. Walker, testified that the Property was transferred back to he and his wife for no consideration. Thus, it is clear that the property was not transferred for a reasonably equivalent value. In regards to the issue of insolvency, it is the Court's finding, upon the testimony presented at the hearing, that the Debtors' had been having financial difficulty for some time. On April 6, 2005, when Debtors filed their petition, their schedules listed unsecured debt in excess of \$81,000 and personal property valued at only \$7,123.00. Further, based upon the information listed in Debtors' schedules, Debtors clearly had a substantial amount of debt around the time of the transfer. For example, Debtors Schedule F lists the claim of Ford Motor Credit, in the amount of \$24,000, for an automobile turned in by the Debtors in May of 2004. As Debtors listed owning personal property valued at only \$7,123.00, this debt alone at the time of the transfer would have most likely have

rendered the Debtors insolvent. Taking all the above into consideration, the Court finds that Debtors were insolvent on the date the transfer of the Property occurred.

Based upon the above, the Court finds that Plaintiff is clearly entitled to avoid the transfer of the property pursuant to 11 U.S.C. § 548(a)(1)(B). As a clear finding has been made in favor of the Plaintiff, the Court will not discuss Plaintiff's alternative argument that the transfer of the Property could also be avoided under 11 U.S.C. § 548(a)(1)(A).

CONCLUSION

Pursuant to 11 U.S.C. § 548(a)(1)(B), the Court finds Plaintiff is entitled to avoid the transfer of the Property. The Court will enter a separate judgment that is consistent with these Findings of Fact and Conclusions of Law.

Dated this 23 day of January, 2006 in Jacksonville, Florida.

/s/ George L Proctor
George L. Proctor
United States Bankruptcy Judge

Copies To:

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